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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 CARIBBEAN BLUES, INC., doing
13 business as "EKB TEXTILES," a
14 California Corporation,

15 Plaintiff,

16 v.

17 ZOETOP BUSINESS CO., LTD, et al.,

18
19 Defendants.

Case No.: 2:22-cv-05659-DSF-AS
Hon. Dale S. Fischer Presiding

JOINT RULE 26(f) REPORT

Date: December 5, 2022

Time: 11:00 AM

Location: Courtroom 7D

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22 By and through their attorneys of record, who are set forth below, the parties
23 have prepared and hereby submit this jointly signed Scheduling Report following the
24 conference of counsel required by Federal Rule of Civil Procedures 16(b) and 26(f)
25 and Central District Local Rule 26-1.
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1 **A. STATEMENT OF THE CASE**

2 **1. Plaintiff's Contentions**

3 Plaintiff Caribbean Blues, Inc., doing business as “EKB Textiles” (“Plaintiff or
4 EKB”) is a Los Angeles-based design and fabric company. As part of its business
5 practices, it creates or purchases the exclusive rights, to two-dimensional works of art
6 and files and receives copyright registrations for these works. This case concerns the
7 infringement of two such designs—entitled #9259 and #9383 (the “Subject
8 Designs”)—by Defendants. Specifically, the Complaint alleges that defendants sold
9 fabric and/or garments bearing unauthorized reproductions and/or derivative works
10 that infringe upon the Subject Designs.

11 Plaintiff estimates that recoverable damages, including without limitation
12 Defendants’ disgorgeable profits, Plaintiff’s actual damages, attorneys’ costs, and
13 pre-judgment interest on its copyright claim are likely in excess of \$50,000.00.
14 Plaintiff may alternately elect statutory damages, which would amount to up to
15 \$150,000 per instance of infringement.

16 **2. Defendant Zoetop’s Contentions**

17 Defendant Zoetop Business Co., Ltd. (“Defendant” or “Zoetop”) disputes all of
18 Plaintiff’s material allegations. Defendant contends that the accused products are not
19 substantially similar to the designs at issue, let alone virtually identical; Plaintiff will
20 therefore be unable to prove copying as a matter of law. Defendant further contends
21 that any damages attributable to the alleged infringement are far less than the estimate
22 provided by Plaintiff and that, if Plaintiff elects to recover statutory damages, such
23 statutory damages would be minimal as Plaintiff will be unable to prove willfulness.
24 Defendant has also pleaded numerous affirmative defenses, including independent
25 creation and implied license.

26 **B. SUBJECT MATTER JURISDICTION**

27 This action arises under the Copyright Act of 1976, Title 17 U.S.C. § 101 *et*
28 *seq.* Accordingly, this Court has federal question jurisdiction under 28 U.S.C. §§

1331 and 1338(a).

2 **C. LEGAL ISSUES**

3 1. Plaintiff's Contentions

4 The legal issues in this case involve Plaintiff's ownership of the copyright in
5 the Subject Designs and Defendants' infringement thereof, including Defendants
6 access to the Subject Designs and the substantial similarity between the Subject
7 Designs and the designs on the Infringing Products. Legal issues concerning
8 heightened damages for willful infringement are also present.

9 2. Defendant Zoetop's Contentions

10 Zoetop concurs with Plaintiff's summary of the legal issues.

11 **D. PARTIES, EVIDENCE, etc.**

12 The parties are Plaintiff Caribbean Blues, Inc., doing business as "EKB
13 Textiles" and Defendants Zoetop Business Co., Ltd., Shein Distribution Corp., and
14 Roadget Business Pte Ltd. Should Defendants reveal in their Initial Disclosures or
15 discovery responses any garment manufacturers, vendors, or suppliers involved in the
16 chain of alleged infringement of Plaintiff's Subject Designs, Plaintiff will move to
17 add such entities as parties to this action in place of Doe Defendants. Plaintiff has no
18 parents, subsidiaries, or affiliates that are implicated in this litigation.

19 Zoetop answered the operative complaint on October 25, 2022. Defendant
20 Shein Distribution Corp. will likely be represented by the same counsel as Zoetop
21 and will answer or otherwise respond to the operative complaint in due course.

22 Percipient witnesses that Defendant intends to seek testimony or documents
23 from include: (1) the actual designer(s) of each of Plaintiff's claimed registered
24 works; (2) people involved in printing, milling, or manufacturing Plaintiff's designs,
25 including, especially, any mills or third-party trading companies that Plaintiff
26 provided its designs to, so that the designs could be printed onto fabric in China; (3)
27 individuals, whether employed by Plaintiff or who work for Plaintiff's customers or
28 suppliers, with direct knowledge of how Plaintiff typically values its artwork; (4)

1 Plaintiff's owner or other principal; (5) a corporate representative of Plaintiff; and (6)
2 witnesses employed by or who represent Defendant.

3 Relevant documents and things that will be sought in discovery include: (1) the
4 *exact* "deposit copy" that was submitted to the Library of Congress as part of
5 Plaintiff's copyright registration application, for each of the copyright(s)-in-suit, and
6 other documentation related to the application and registration of Plaintiff's works;
7 (2) documents and other things from the actual designer(s) of Plaintiff's claimed
8 registered works, evidencing who purportedly created something original, when, and
9 how they did so; (3) documents and other things from people involved in printing,
10 milling, or manufacturing Plaintiff's designs, including, especially, any mills or third-
11 party trading companies that Plaintiff provided its designs to, so that the designs
12 could be printed onto fabric in China; (4) documents and other things from
13 individuals, whether employed by Plaintiff or who work for Plaintiff's customers or
14 suppliers, with direct knowledge of how Plaintiff typically values its artwork; and (5)
15 other documents from Plaintiff that relate to proving copying or access, and to
16 proving damages.

17 **E. CERTIFICATION OF INTERESTED PARTIES OR PERSONS**

18 Plaintiff filed the Certification of Interested Parties or Persons (*Dkt. 3*) on
19 August 10, 2022, pursuant to Local Rule 7.1-1.

20 Defendant Zoetop filed a Certification and Notice of Interested Parties (*Dkt.*
21 18) and a Corporate Disclosure Statement (*Dkt. 19*) on October 25, 2022. Defendant
22 Shein Distribution Corp. will file the same documents in due course.

23 **F. INSURANCE**

24 **1. Plaintiff's Contentions**

25 Plaintiff does not have insurance coverage for the claims at issue.

26 **2. Defendant Zoetop's Contentions**

27 Defendant is not aware of any insurance that would cover the claims at issue.
28

1 **G. MAGISTRATE JUDGE**

2 The Parties do not stipulate to the use of a magistrate judge unless specifically
3 required under the applicable local rules.

4 **H. DISCOVERY**

5 The parties anticipate using all discovery allowed under the Federal Rules,
6 including depositions, requests for documents, interrogatories and requests for
7 admissions, and potentially entering into an appropriate stipulated protective order.

8 The parties anticipate seeking sales and distribution information, including
9 without limitation information concerning sales receipts, store-by-store asset
10 allocation, profits attributable to the product at issue, as well as the development and
11 authorship of the accused designs at issue, the creation, use, registration, purchase,
12 assignment, or other manner by which alleged rights in the Subject Designs were
13 obtained by any past or present owner. The parties agree to meet and confer over
14 electronic discovery issues at the time any such disputes arise, including the form or
15 production of electronic information and scope of any such electronic discovery. The
16 parties further anticipate an initial round of written discovery to be propounded by the
17 end of December 2022. Follow-up written discovery and conferring over and
18 otherwise resolving any discovery disputes should be completed by the end of April
19 2023. The parties also anticipate that each party, as well as third parties, will need to
20 be deposed, and that said depositions shall take place after an initial round of written
21 discovery. The parties anticipate these depositions being taken during the discovery
22 period.

23 *See* Exhibit A – Schedule of Pretrial and Trial Dates for applicable discovery
24 deadlines.

25 **I. MOTIONS**

26 1. Plaintiff's Contentions

27 Plaintiff may wish to move to add additional defendants should discovery
28 reveal the involvement of currently unknown parties in the chain of infringement of

1 Plaintiff's proprietary designs. It is likely an initial round of discovery will need to be
2 obtained in order to discern the identities of these defendants.

3 2. Defendant Zoetop's Contentions

4 In the event that material errors are found in any of Plaintiff's copyright
5 registration applications, it is possible that Defendants would make a motion pursuant
6 to 17 U.S.C. § 411(b)(2), which provides that in certain circumstances "the court
7 shall request the Register of Copyrights to advise the court whether the inaccurate
8 information, if known, would have caused the Register of Copyrights to refuse
9 registration."

10 Another non-dispositive motion that Defendants may bring would be one to
11 obtain testimony from Plaintiff's designer of the works at issue, if that designer
12 resides out of the United States and if Plaintiff refuses to produce him or her
13 voluntarily.

14 **J. DISPOSITIVE MOTIONS**

15 1. Plaintiff's Contentions

16 Plaintiff anticipates filing a Motion for Partial Summary Judgment for liability
17 as to Defendants for copyright infringement by the deadline for dispositive motions.
18 Plaintiff anticipates filing this motion after sufficient discovery has been completed.
19 Plaintiff also will not seek bifurcation.

20 *See* Exhibit A – Schedule of Pretrial and Trial Dates for applicable motion
21 deadlines.

22 2. Defendant Zoetop's Contentions

23 Defendant anticipates filing a motion for summary judgment challenging
24 substantial similarity, in which it will argue that Plaintiff cannot meet the Ninth
25 Circuit's "extrinsic test" for substantial similarity. Depending on how promptly and
26 appropriately Plaintiff answers interrogatories articulating *exactly what* it is claiming
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1 as original authorship, and providing related documents, this motion could be brought
2 well before the close of fact discovery.

3 **K. MANUAL FOR COMPLEX LITIGATION**

4 This case does not utilize the procedures of the Manual for Complex
5 Litigation.

6 **L. SETTLEMENT AND ALTERNATE DISPUTE RESOLUTION**

7 The parties are amenable to using Central District Settlement Procedure No. 2
8 under Local Rule 16-15.4.

9 **M. PRETRIAL CONFERENCE AND TRIAL**

10 *See* Exhibit A – Schedule of Pretrial and Trial Dates for applicable pretrial and
11 trial dates.

12 **N. TRIAL ESTIMATE**

13 Plaintiff and Zoetop have requested a jury trial. The parties estimate the trial in
14 this matter to last between 2-3 court days.

15 **O. TRIAL COUNSEL**

16 Plaintiff's Trial Counsel: Stephen M. Doniger, Trevor W. Barrett, Kelsey M.
17 Schultz.

18 Defendant Zoetop's Trial Counsel: Morgan E. Pietz (lead), Cyrus E. Shahriari,
19 and Thomas P. Burke Jr..

20 **P. INDEPENDENT EXPERT OR MASTER**

21 The parties presently do not believe this case requires the Court to appoint a
22 master pursuant to Rule 53 or an independent scientific expert.

23 **Q. EXPERT WITNESSES**

24 1. Plaintiff's Contentions

25 Plaintiff has not yet determined if it will utilize an expert witness in this case.

26 2. Defendant Zoetop's Contentions

27 Defendant may engage expert witnesses to opine on substantial similarity and
28 attributable profits and deductible costs.

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See Exhibit A – Schedule of Pretrial and Trial Dates for applicable pretrial and trial dates.

S. CLASS ACTIONS

The Parties presently do not believe this case qualifies under a class actions suit.

T. OTHER ISSUES

The Parties do not contemplate that any other issues will affect or complicate the status or management of this case.

WHEREUPON, the parties, by and through their respective attorneys of record, hereby jointly submit this Joint Report.

Dated: November 28, 2022 By: /s/ Stephen M. Doniger
Stephen M. Doniger, Esq.
Trevor W. Barrett, Esq.
Kelsey M. Schultz, Esq.
Attorneys for Plaintiff

Dated: November 28, 2022 By: /s/ Thomas P. Burke Jr
Morgan E. Pietz, Esq.
Thomas P. Burke Jr., Esq.
PIETZ & SHAHRIARI LLP
Attorneys for Defendant Zoetop

Pursuant to Civil L.R. 5-4.3.4(a)(2)(i), the filer attests that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.